IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

CWP No. 196 of 2005

Reserved on : 18.6.2007

Date of Decision : July 17th, 2007

Tilak Raj …Petitioner.

Versus:

Union of India & Others …Respondents.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] Yes.

For the petitioner: Mr. Ashutosh Burathoki, Advocate.

For the respondents. Mr.Sandeep Sharma, Assistant Solicitor General with Mr. Ravinder Thakur, Central Govt. Counsel.

Sanjay Karol, J.

Petitioner has assailed the order dated 4.6.2004 passed by the respondents, discharging him from the Army service. He has prayed for his reinstatement as Grenadier with all consequential benefits.

Petitioner is a resident of Kot Plahari, Tehsil Nurpur, Distt. Kangra, H. P. Passed out his matric and further plus two examination in the year 2001 from the H. P. Board of Education. Since the petitioner's father was permanently residing and working in Delhi since 1994,

---

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

petitioner decided to shift and live with him. In Delhi, petitioner enrolled himself as a recruit in the Grenadiers on 27.12.2002. He was duly selected and sent for training to Jabalpur on 27th February, 2003 and successfully completed his training as Grenadier on 19th January, 2004, when he was posted as Sepoy / Grenadier.

During the verification of character and antecedents, purportedly an adverse report was found against the petitioner and consequently, he was served with show cause notice dated 15th May, 2004 as to why he be not discharged from the Army service under Section 20 of the Army Act, 1950 and Rule 13(3) Item 111(iv) of the Army Rules, 1954, which was responded to in terms of reply dated 21st May, 2004. However, not being satisfied with the same, petitioner was discharged from the Army vide order dated 4.6.2004 on the ground that he was considered unlikely to become an efficient soldier.

From the counter affidavit dated 30th June, 2005 as also supplementary affidavit dated 13th June, 2007 filed by the respondents, it is clear that the action against the petitioner has been taken on the ground that he had furnished false information with regard to his permanent place of residence. His case for verification was sent to DCP South West Delhi, who upon verification reported that the petitioner had stayed in Delhi from March, 2002 to March, 2003 only. This was indicative of the fact that petitioner was only a temporary resident of Delhi and consequently, action was taken against him. Respondents have further clarified that the recruitment in the Army is based on State-wise and category-wise vacancies released by Headquarters from time to time.

Different physical and educational standards vary from State-to-State keeping in mind their geographical, demographical and social constraints.

According to the learned counsel for the petitioner, the form required to be filed in at the time of recruitment contained only one column wherein address was required to be given. It did not specify that permanent address of the candidate had to be filled up. According to him, there was no other column which would have enabled the candidate to make a distinction between permanent address and/ or temporary address. Even in the verification report, there is nothing adverse against him. It does not specify as to whether any false information has been furnished by him or not. Further, he submits that the defence which is now sought to be taken by the respondents was never a ground specified in the show cause notice nor was it because of termination / discharge of the petitioner. The physical specifications for both the regions i.e. Delhi and Shimla are similar, therefore, no advantage could have been taken by the petitioner by filling up the form at Delhi.

In reply, Mr. Ravinder Thakur, learned counsel appearing for the respondents has argued that petitioner's discharge from service is only on the ground that he had filled-up false information with regard to his permanent address. According to him, in terms of the policy of the respondents, there is a State-wise quota and the permanent resident of the State is required to apply through the Agency of the concerned State. He submits that otherwise there is nothing adverse against the petitioner.

I have perused the record. There is only one column pertaining to the address which is required to be filled up. The form in itself does not specify that permanent address of the applicant is

required to be filled up. Learned counsel has relied upon ***Shyam Kumar*** vs. ***Union of India and Others*** (1981(II) Lab.I.C. 1066) and ***Chaukas Ram*** vs. ***Sub-Area Commander, Allahabad and another*** (1991 Lab. I.C. 1056), to contend that the petitioner was required to fill in permanent address cannot be read into the form which was required to be filled in by the petitioner. I am in agreement with the counsel that there was no specific requirement stipulated in the form whereby the petitioner was required to mention about his permanent place of residence. The 'residence' obviously would mean residence existing in reality and in fact and not merely in form. In *Mohan Singh vs. Lajya Ram and others,* reported in AIR 1956 Punjab 188, it has been held that expression 'resides' does not import any permanency of residence. Same is the view in *Sampooram vs. Sundaresan*, reported in AIR 1953 Mad. 78. In *Union of India and others vs. Dudh Nath Prasad,* reported in AIR 2000 SC 525, it has been held:-

> "Word 'residence' has been defined as personal presence at some place of abode with no present intention of definite and early removal and with purpose to remain for undetermined period, not infrequently, but not necessarily combined with design to stay permanently."

Learned counsel for the petitioner has further relied upon the judgment of the Apex Court in *Sri T.Ashok Pai vs. Commissioner of Income Tax, Bangalore*, passed in Appeal (civil) 2747 of 2007 decided on 18th May, 2007 to contend that there has been no deliberate act on the part of the petitioner to suppress his permanent address and, therefore,

in view of the law laid down by the Court the said alleged act of petitioner cannot be held to be concealment. Perusal of the verification of character and antecedents report would show that the same does not mention that the petitioner has submitted false information with regard to his permanent place of residence. Infact the report indicates that between March 2002 to March, 2003, nothing adverse was found against the petitioner. For the purposes of convenience and ready reference, portion of the same is reproduced as under:-

> "Since Mar. 2002 to Mar, 2003, there is nothing adverse against the individual. Necessary enquiry may be got conducted through the concerned authority for the period before March, 2002.

Not only this, the character certificate issued by the respondents (Ex.P1) also makes it clear that the conduct of the petitioner is certified to be *'Good'*.

The show cause notice dated 15.5.2006 only indicates that petitioner had given false information at the time of enrolment. It did not specify that petitioner had filled in a false address or he was otherwise ineligible for having been selected from Region other than his permanent place of residence. Be that as it may be, even though the form did indicate that Village, Tehsil and District, was to be filled up at the place of residence, however, the same would be irrelevant for a person filling up the form in the Metropolitan city or urban area. The Army has only one form and even the same does not specify that recruitment has to be region-wise. Learned counsel for the respondents has relied upon a

clarification dated 5.3.2004 issued by Additional Director General of Recruitment, Army Headquarters, wherein it has been clarified that the question in the enrolment form pertaining to the village, Post Office/Tehsil/District etc. of the candidates necessarily implies the home address and not the place of temporary abode. In my view the said clarification only supports the case of petitioner inasmuch as it was not made clear in the form or any of the circulars of the respondents that the address required to be filled in was infact the permanent place of residence. Any subsequent clarification cannot be pressed to deprive the petitioner of his legitimate right.

I do not find favour with the submission of the respondent that petitioner had deliberately enrolled himself in Delhi to take benefit of the quota. Respondents have failed to show that had the petitioner enrolled himself in Himachal Pradesh, he would have been at a disadvantageous position. It has already come on record that petitioner's father was already residing and working in Delhi for several years. Petitioner is a poor person and his father is working as a Helper with a Halwai in Delhi. Petitioner obviously had left his village in search of livelihood and was in fact residing along with his father for more than one year, which is quite evident from the verification report itself.

There is nothing on record to show that petitioner had at any point in time applied for recruitment in Himachal Pradesh and had been rejected as such.

For all the aforesaid reasons, I am of the considered view that order dated 4th June, 2004 discharging the petitioner from service needs to be quashed and it is done so accordingly. Petitioner is directed

to be reinstated as Grenadier in his unit with all the consequential benefits i.e. seniority and continuity in service. However, petitioner is entitled for back wages to the extent of 50% only.

The writ petition is accordingly allowed without costs.

July 17th, 2007. **(Sanjay Karol)**
(rana) **Judge.**